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IN THE
COURT OF APPEALS OF INDIANA

KEVIN RAINEY,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A05-0610-CR-573
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Jamie Edgar, Judge Pro Tempore
Cause No. 49G14-0509-FD-159976

June 18, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Kevin Rainey appeals his conviction for Possession of a Controlled Substance, a class D felony.[1] He presents the following restated issue for review: Did the trial court abuse its discretion by admitting evidence seized during a search incident to arrest?

We affirm.

On the evening of September 18, 2005, Indianapolis Police Department Officer Michael Schollmeier initiated a traffic stop of a vehicle after the driver made a turn without signaling. Rainey was the front-seat passenger in the stopped vehicle, and there was another passenger in the back seat. Officer Schollmeier approached the driver's side of the vehicle, while an assisting officer, Kevin Kern, approached the passenger's side. Officer Schollmeier initially spoke with the driver. The officers then turned their attention to Rainey,[2] who identified himself as Zachary Williams.

A computer check through control revealed that the driver, Tarik Alsum, had never received a valid driver's license, and control was unable to get any information back on a "Zachary Williams." Alsum was placed under arrest for operating a vehicle having never received a license. In a search incident to the arrest, Officer Schollmeier seized various drugs that were found on Alsum's person.

The officers also further questioned Rainey at the scene of the stop in an attempt to ascertain his true identity. When they eventually discovered his name, a warrants check revealed that he had an outstanding arrest warrant. Rainey was then arrested

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[1] Ind. Code Ann. § 35-48-4-7 (West 2004).

[2] The officers apparently already knew the identity of the back-seat passenger from previous encounters.

pursuant to the warrant. In a search incident to arrest, the Officer Schollmeier recovered two ecstasy pills in Rainey's right shoe.

The State charged Rainey with possession of a controlled substance. Rainey filed a pretrial motion to suppress on November 2, 2005, which the trial court never ruled upon. At the bench trial on June 21, 2006, Rainey objected to the admission of the drug evidence on Fourth Amendment grounds, though the objection was not raised until after the testimony of Officer Schollmeier, the State's sole witness. The trial court denied Rainey's motion and admitted the evidence seized following his arrest. Rainey was subsequently convicted as charged. Rainey now appeals, challenging the admission of said evidence.

A trial court has broad discretion in ruling on the admissibility of evidence, and we will disturb its ruling only where it is shown that the court abused that discretion. *Griffith v. State*, 788 N.E.2d 835 (Ind. 2003). "We view the circumstances in their totality and, without reweighing evidence and considering conflicting evidence most favorable to the trial court's ruling, determine if there was substantial evidence of probative value to support the trial court's ruling." *Id*. at 839-40.

On appeal, Rainey claims that he was merely a passenger in the vehicle during a routine traffic stop and that no reasonable suspicion of criminal activity existed to detain or question him regarding his identity. Therefore, he claims "the interrogation and subsequent arrest violated Rainey's right to be free from unreasonable search and seizure

under the Fourth and Fourteenth Amendments to the United States Constitution".[3] In this regard, Rainey relies exclusively on *Sanchez v. State*, 803 N.E.2d 215 (Ind. Ct. App. 2004), *trans. denied*.

Contrary to Rainey's assertion on appeal, *Sanchez* does not present a "factually similar situation" to the case at hand. *Appellant's Brief* at 6. In that case, Officers Todd Wellman and Angel Poe attempted to serve a warrant on Antwan Luckett at his apartment. Unsuccessful, the officers then canvassed the area surrounding the apartment complex in an attempt to find Luckett. Officer Wellman observed a man leaning in the passenger window of a car. As the officers approached the man, they quickly realized he was not Luckett.

> Officer Wellman requested permission to speak to this individual, later identified as Sanchez, and asked him if he lived in the area and knew Luckett. The Officers subsequently required Sanchez to remove his hands from his pockets and to provide identification. Sanchez told the Officers that although he did not have state identification with him, his name was "Carlos Hernandez," with a date of birth October 31, 1981. He further added that he could not remember his social security number. While Officer Wellman investigated the information for open warrants, Officer Poe continued questioning Sanchez. When the Officers were unable to confirm Sanchez' identity, Sanchez clarified that his identification card might be just a "school I.D." Sanchez stated next that he did not have one fixed address, but received mail at 3110 Medford Avenue. He was unable to identify the owner of this residence or its telephone number. When the Officers questioned Sanchez why he was at the apartment complex, he told the Officers that he was visiting his uncle in apartment C. However, the Officers knew from prior experience that the apartments were numbered, not lettered.

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[3] To the extent Rainey asserts a violation of article 1, section 11 of the Indiana Constitution, we observe he has wholly failed to articulate a separate argument in that regard. As a result, the argument is waived. *See Sharp v. State*, 835 N.E.2d 1079 (Ind. Ct. App. 2005).

> After failing to find Sanchez' identification as Carlos Hernandez on file, the Officers took him to his uncle's apartment, about forty feet away. At the apartment, an Hispanic male opened the door and claimed not to recognize Sanchez. At that moment, Sanchez whispered something in Spanish and the occupant replied that he was indeed Sanchez' uncle, but when asked, did not know Sanchez' name. Thereafter, Sanchez was handcuffed and transported to the IPD Identification Unit located in the City-County Building where he was fingerprinted and identified as Sanchez. He was arrested for an open State of Illinois warrant and searched incident to the arrest. During this search, a small quantity of marijuana was recovered.

Sanchez v. State, 803 N.E.2d at 218 (record citation omitted).

Under the specific facts of that case, we held that the marijuana evidence resulted from an illegal detention and should have been excluded from trial under the fruit of the poisonous tree doctrine. *Sanchez v. State*, 803 N.E.2d 215. Specifically, although Sanchez's initial encounter with the officers was consensual, his encounter evolved into an investigatory stop that was not supported by reasonable suspicion. We further explained:

> Even though the United States Supreme Court has recognized that an interrogation relating to one's identity or a request for identification by the police does not, by itself constitute a Fourth Amendment seizure, the Officers here clearly went too far. *See* [*Florida v.*] *Royer*, 460 U.S. [491, 501 (1983)]. Absent any reasonable suspicion, Sanchez should have been free to leave as soon as Officer Wellman was advised that the name Sanchez provided was "not on file." Yet, the Officers continued to interrogate Sanchez, and eventually transported him [in handcuffs] to the police department for fingerprinting.

Id. at 223 (record citation omitted).

Rainey's reliance on *Sanchez* is entirely misplaced. Here, the officers did nothing more than ask Rainey to identify himself. *See Hiibel v. Sixth Judicial Dist. Court of Nevada*, 542 U.S. 177, 185 (2004) ("[i]n the ordinary course a police officer is free to ask

a person for identification without implicating the Fourth Amendment"). Unlike Sanchez, Rainey was not otherwise detained or required to accompany the officers to a different location to verify his name. Moreover, in the instant case, it is significant to note that Rainey does not dispute the legality of the initial stop of the vehicle. *See Tawdul v. State*, 720 N.E.2d 1211, 1217 (Ind. Ct. App. 1999) ("[o]nce an officer effects a lawful traffic stop, the passenger of that vehicle is also validly stopped"), *trans. denied*.[4] *Sanchez* simply does not support Rainey's broad contention that the officers were precluded from asking him about his true identity following the lawful stop of the vehicle in which he was a passenger.

Once Rainey informed the officers of his actual identity, the officers discovered he had a warrant out for his arrest. At that point, the officers arrested Rainey pursuant to the warrant, and the subsequent search of Rainey was incident to this lawful arrest. *See Burkes v. State*, 842 N.E.2d 426 (Ind. Ct. App. 2006) (incident to lawful arrest, an arresting officer may conduct a warrantless search of the arrestee's person), *trans. denied*. Therefore, the drug evidence was properly admitted at trial.

Judgment affirmed.

BAKER, C.J., and CRONE, J., concur.

[4] In *Tawdul v. State*, we held that, in addition to exiting a lawfully stopped vehicle upon police demand, a passenger "ha[s] the obligation to comply with the officer's request to return to the car for purposes of ensuring officer safety and allowing the officer to make an assessment of the situation." *Id*.